

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

POWER INTEGRATIONS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04-1371-JJF
	)	
FAIRCHILD SEMICONDUCTOR	)	
INTERNATIONAL, INC., and FAIRCHILD	)	
SEMICONDUCTOR CORPORATION,	)	
	)	
Defendants.	)	

**DEFENDANTS' REPLY IN SUPPORT OF ITS  
EXPEDITED MOTION TO AMEND THE SCHEDULE**

In its Opposition (D.I. 123), Power Integrations concedes that it failed to provide Fairchild with fact discovery, including the deposition of Balu Balakrishnan, that may be relevant to Fairchild's expert reports. Power Integrations, however, refuses to extend the case schedule to remedy its failure and instead insists that Fairchild submit incomplete expert reports on October 31, 2005.

Given that initial expert reports are due October 31, 2005, Fairchild respectfully requests a hearing on either October 28 or 31, 2005. Alternatively, Fairchild respectfully requests that the Court stay the exchange of expert reports so that Your Honor can consider this issue.

**I. The Court Has Inherent Power to Amend the Schedule.**

Although Power Integrations concedes that the Court has the inherent power to amend its schedule. Opposition at 4. Indeed, in its Scheduling Order, the Court specifically noted that either party could move to amend the schedule. *See* Rule 16 Scheduling Order (D.I. 17), ¶ 10. Power Integrations' inability to produce Mr. Balakrishnan for deposition necessitates such an amendment.

**II. Mr. Balakrishnan's Testimony Is Directly Relevant to Fairchild's Expert Reports.**

Although Power Integrations chastises Fairchild for assuming that Mr. Balakrishnan will

have testimony relevant to the non-infringement and invalidity of the Power Integrations patents, Mr. Balakrishnan is the only technical fact witnesses that Power Integrations will call at trial. Thus, Power Integrations must believe that Mr. Balakrishnan has relevant information.

Moreover, Power Integrations designated Mr. Balakrishnan as Power Integrations' 30(b)(6) witness concerning the invalidity and noninfringement of the asserted patents. There is no dispute that Fairchild was entitled to this discovery by September 30, 2005, or that Power Integrations failed to provide it. It would be highly prejudicial to force Fairchild to submit expert reports before receiving the fact discovery to which it is entitled.

### **III. Fairchild's Proposed Schedule Is Reasonable.**

Fairchild's proposed schedule is driven entirely by Power Integrations' failure to produce Mr. Balakrishnan for deposition. While fact discovery was to end by September 30, 2005, Mr. Balakrishnan's deposition will not begin until November 17, 2005. The parties have agreed that this deposition will continue for multiple days. This is a minimum delay of seven weeks.<sup>1</sup>

Fairchild has proposed essentially the same schedule as currently set by the Court. The only difference is an additional week for the parties to exchange rebuttal expert reports to accommodate the Hanukah, Christmas and New Year's holidays.

Power Integrations' failure to provide Fairchild with fact discovery unavoidably impacts the remaining schedule. Extending expert reports requires a similar extension to the deadline for expert discovery. Likewise, the Court had indicated that expert reports and discovery were to be completed prior to claim construction. Thus, that hearing, and the accompanying briefing, must be extended. Dispositive motions should be extended to so that the parties can incorporate the Court's claim construction ruling and the pretrial conference extended so that the Court can consider dispositive motions. Thus, Fairchild's proposed schedule is both sensible and fair.

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<sup>1</sup> Moreover, the parties have noticed over 25 additional depositions that have yet to be scheduled. This fact discovery also should be concluded prior to expert reports.

#### IV. CONCLUSION.

Sympathetic to Mr. Balakrishnan's health, Fairchild repeatedly agreed to reschedule Mr. Balakrishnan's deposition. It is improper for Power Integrations to now seek to use this cooperation to prejudice Fairchild's ability to prepare its expert reports. Accordingly, Fairchild respectfully requests that the Court grant its motion to extend the schedule.

ASHBY & GEDDES

*/s/ John G. Day*

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Dated: October 28, 2005

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of October, 2005, the attached **DEFENDANTS'**  
**REPLY IN SUPPORT OF ITS EXPEDITED MOTION TO AMEND THE SCHEDULE**  
was served upon the below-named counsel of record at the address and in the manner indicated:

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